IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 729 OF 1986

Tata Engineering & Locomotive Co.Ltd. ..Plaintiff

Vs.

Tatanagar Transport & Anr. ..Defendants

Mr.N.G.Thakkar i/b N.H.Nathani for the plaintiff

None for the defendants

CORAM : S.U.KAMDAR, J
DATED : 2ND FEBRUARY, 2006

P.C.:

1. The present suit is filed for the recovery of sum of Rs.3,44,964.60 with interest @ 18% p.a. on the principal amount of Rs.1,88,213/-. Further prayers are also made in respect of the sale of motor vehicle. However, the learned counsel for the plaintiff fairly concedes that motor vehicle has not been traced though Receiver was appointed. In view thereof, there is no question of granting any prayers save and except prayer clause (c) of the plaint.

2. The aforesaid claim arises out of hire purchase agreement which has been executed by and between the plaintiff and defendant on 31.12.79 for the sale of Motor Vehicle. Under the terms and conditions of the said agreement defendant was required to make payment of hire charges. Defendants have committed various defaults and ultimately, plaintiff was required to terminate the said agreement which the plaintiff did by letter dt.20.11.85 and called upon the defendant to make payment of balance amount which was due and payable under the said hire purchase agreement. However, defendant failed and neglected to make payment and accordingly demand notice was issued. Inspite of that, payment was not made and hence the present suit is filed.

3. Defendants have filed no written statement though duly served. In so far as documents are concerned, the learned counsel for the plaintiff have tendered an affidavit of one Parvez Jamshedji Vazifdar who has deposed that the documents are not traceable and are lost because of transfer of office of the plaintiff from Army & Navy Building,

Fort, Bombay to Poonam Chambers ’B" Worli, Bombay and thereafter to World Trade Centre-I, 26th Floor, Cuffe Parade, Mumbai. In the said shifting of office, the said documents are supposed to have been lost. Xerox copy of the said documents are produced and the same are taken on record as secondary evidence. The said compilation of documents is marked as Ex.A collectively. In view of the aforesaid, since there is no defence, suit is decreed in terms of prayer clause (c) and plaintiff will also be entitled to cost in accordance with the rules. Suit disposed of. Refund of court fee as per rules.